



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,902	03/29/2007	Karen Rita Crawford	0470-061793	4065

28289 7590 10/27/2010
THE WEBB LAW FIRM, P.C.
700 KOPPERS BUILDING
436 SEVENTH AVENUE
PITTSBURGH, PA 15219

EXAMINER

DESAI, HEMANT

ART UNIT	PAPER NUMBER
----------	--------------

3721

MAIL DATE	DELIVERY MODE
-----------	---------------

10/27/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/585,902	Applicant(s) CRAWFORD ET AL.	
	Examiner Hemant M. Desai	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-34, 39-40, 44-51 is/are pending in the application.
- 4a) Of the above claim(s) 20-34 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40 and 44-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/4/2010 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 40 and 44-45 and 48-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent (FR 2747107, hereinafter '107) in view of Pajak et al. (6058682).

French Patent discloses a method for providing a packaging filled with powder, comprising the provision of a container provided with a base (4, fig. 1) and a top which has a peripheral edge (fig. 1), placing a film (16, fig. 6) above the content of the container, and joining the film, provision being made for the fitting of a lid (1, fig. 6), the packaging further comprising a scoop (3), accommodated by the top part of the container (see fig. 6) on the film (7), the lid provided with the fixing means (9, figs. 3-4)

Art Unit: 3721

for the scoop and adhering the lid rim to the peripheral top edge of the container for defining an accommodation space between the lid and the film for the scoop (see fig. 6).

French Patent as mentioned above, disclose all the claimed limitations, including a film (7, 16) inside the container. French Patent is silent about sealing the film inside the wall of the container, instead French Patent discloses to deform (16) the film (7, fig. 6) to make the room for the spoon (3). However, Pajak et al. disclose that it is known in the art to place a heat sealable film inside the container and seal the film with the inside wall of the container (see fig. 5) to make the room between the lid and the heat sealable film to insert the spoon (see fig. 7). Because both Reference French Patent and Pajak et al. teach methods for placing the film inside the container in such a way to make the room for the spoon, it would have been obvious to one skilled in the art to substitute one method for the other to achieve the predictable result of making a room between the film and lid so that the spoon can inserted in the space between the lid and the film. ***KSR Int'l v. Teleflex Inc., 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007).***

Regarding the claimed distance 20-25 mm below the peripheral and the distance claimed in claim 48, it is obvious to one having an ordinary skill in the art to adjust the distance of the film below the peripheral edge depending on the size of the spoon.

Regarding claim 44, French Patent discloses that the provision of a container comprises using blanks of wall material and base material as the starting materials and joining these together immediately before filling with product.

Regarding claim 45, French Patent discloses that the heat-sealable film provides a gastight seal.

Regarding claims 49-50, the modified French Patent teaches that the container wall contains a heat-sealable material on the inside, and wherein the seal comprises a plastic film seal, which seal is fixed to the container wall by heat sealing (see col. 3, lines 1-10 of Pajak).

Regarding claim 51, the method of French Patent as modified by Pajak et al., as explained above, teaches all the claimed limitations of claim 51.

4. Claim 46-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent and Pajak et al. as applied to claim 40 above, and further in view of Gible (3556174).

The modified French Patent, as mentioned above, meets all the claimed limitations, except for feeding inert gas in the headspace before sealing the film to the container. However, Gible discloses that it is known in the art to feed inert gas in headspace before sealing the container to extend shelf life of the product (see col. 1, lines 20-40). Thus, it would have been obvious to one of ordinary skill in the art to feed the inert gas before sealing the container in the method of Pajak et al. to extend shelf life of the product as taught by Gible. Using the known technique of replacing headspace with the inert gas for extending shelf life of the product of Pajak et al. would have been obvious to one of ordinary skill. ***KSR Int'l v. Teleflex Inc., 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007).***

Response to Arguments

5. Applicant's arguments with respect to claims 40, 44-48 have been considered but are moot in view of the new ground(s) of rejection. In response to Applicant's argument that Pajak does not overcome these deficiencies in Bois. Pajak is directed to a container with a film fused directly to the inside wall of the container and does not teach or suggest a container having a heat-sealable material on the inside wall. Note that, the film is heat sealed to the inner wall of the container, therefore, the inner wall is inherently heat-sealable.

Applicant further argues that, a person skilled in the art would realize that with a metal can, such as the one disclosed in Bois, there is no reason to use a heat-sealable material on the inside of the can or to incorporate a heat seal at all and, there is no motivation provided in either Bois or Pajak for a person skilled in the art to combine the two references to add a heat-sealable material to the inside wall of the can and incorporate a heat seal to seal the container disclosed in Bois. Note that, Bois clearly discloses (in the English translation) that the powder food can be preserved in metal, carton or plastic. Examiner is relying on the secondary reference to show that it is known in the art to place a heat sealable film in side the containerto make the room between the lid and the heat sealable film to insert the spoon. The primary reference (French Patent) also discloses to make room for the spoon by deforming the closure member (7). Because both Reference French Patent and Pajak et al. teach methods for making the room between the film and the lid, it would have been obvious to one skilled in the art to substitute one method for the other to achieve the predictable result of

Art Unit: 3721

making a room between the film and lid so that the spoon can inserted in the space between the lid and the film.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 6:30 AM-5:00 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hemant M Desai/
Primary Examiner, Art Unit 3721